

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10562 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

P.B. CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10562 of 1993
MR PK SHUKLA for MR PRANAV V SHAH for Petitioner No. 1
MR PD BHATE, AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 31/03/2004

ORAL JUDGEMENT

1. In this case the petitioner has made a grievance that despite he was entitled to have compassionate

appointment in the employment of respondents, he was not granted that benefit solely on the ground that the scheme of compassionate appointment was not applicable in his case.

1.1. The father of the petitioner was working as Police Constable in the Police Department and was at the relevant time serving within the jurisdiction of commissioner of Police at Rajkot. He expired on 14th November, 1974. At the time of the death of his father the petitioner was minor as he was born on 19th January, 1971. It appears that on attaining the majority the petitioner made application on 1st July, 1988 to respondents to grant him appointment on compassionate ground. From the office of respondent no. 3, in response to said application, he received the communication calling upon him to furnish certain documents and copy of the application in triplicate. However, subsequently the petitioner was informed by the respondents vide communication dated 17th August, 1988 that his request for appointment as Police Constable cannot be acceded to on the ground that petitioner did not have requisite educational qualification. He was, however, intimated that if he so desired, he could make a separate application for appointment in the post of Peon. In view of the said communication the petitioner made another application dated 2nd September, 1988 requesting for appointment as Peon. In response to the said application the petitioner was given intimation by letter dated 28th December, 1988 by the deputy Administrative Officer of the respondent no. 2's office that since the petitioner's father had died on 14th November, 1974 and that the scheme regarding compassionate appointment was introduced in the year 1975, his application for appointment on compassionate ground cannot be granted.

1.2. It appears that even after aforesaid intimation the petitioner persisted with his efforts by making applications for appointment as Peon. The Administrative Officer of respondent no. 2 again by order dated 19th December, 1990 intimated the petitioner that he could not be appointed on the post of Peon on compassionate ground as his father had expired on 14th November, 1974; whereas the scheme had been introduced in the month of October 1975. Both these orders have been challenged by the petitioner in this petition. It appears that earlier some efforts to bring about the settlement had been made by this Court and matter was even referred to the general Lok Adalat. However, efforts to conciliate the dispute did not materialize in view of the stand of the Department that the decisions taken by this Court in

similar circumstances are under contemplation for being challenged before the Apex Court. Thereafter, the Forum of Alternative Dispute Resolution (VISAMA) by order dated 15th January, 2004 referred the matter again to the Court for being decided on its merits.

2. Mr. P.K. Shukla, learned advocate appearing for Mr. P.V. Shah for the petitioner has submitted that the respondents could not have denied the appointment on compassionate ground to the petitioner on the ground that the petitioner's father had expired on 14th November, 1974, whereas the scheme was introduced in the month of October 1975. In support of his contention he has placed reliance on the decision of this Court [Coram : H.K. Rathod, J.] rendered in the case of Arvindkumar N. Bhatt v/s. State of Gujarat reported in 2001 (1) G.L.H. page 517.

2.1. As against that, Mr. P.D. Bhate, Ld. AGP has submitted that considering the fact that the petitioner's father had died prior to the introduction of the scheme, petitioner was not entitled to have benefit of the scheme.

2.2. It may be noted here that though the petition is of the year 1993, no affidavit-in-reply has been filed on behalf of the respondents.

3. Having gone through the record of this petition as well as having carefully considered the rival submissions, it clearly appears that the father of the petitioner died while he was in harness, working as Police Constable under the jurisdiction of respondent no. 3. It also appears that petitioner at that time was hardly aged 3 years. The scheme regarding compassionate appointment was introduced in the month of October 1975. Initially in view of the aforesaid scheme petitioner had made an application on 1st July, 1988 i.e. almost immediately after attaining the majority. In response to the said application he was directed to supply certain documents to give proof regarding income of the family, etc. However, later on his application was rejected by letter dated 2nd July, 1988 on the ground that he did not possess requisite educational qualification for being appointed as Police Constable. At the same time he was intimated that he could, if he so desired, make an application for appointment on the post of Peon. Thus, at the initial stage petitioner's request for appointing on the post of Police Constable was rejected on the ground of educational qualification. At that time the respondents did not mention that the application was also

required to be rejected in view of the fact that petitioner's father had expired prior to introduction of the scheme. It is only when in accordance with the Department's own suggestion the petitioner made an application for the post of Peon. The Department for the first time came out with the case that his application for post of Peon could not be accepted as his father had expired before October 1975. Even his subsequent application has been turned down for this very reason.

3.1. In the decision relied on by Mr. Shukla in the case of Arvindkumar N. Bhatt (supra) this Court has clearly laid down as under :-

"7. His application for compassionate appointment has been rejected on the sole technical ground that at the time of death of the father of the petitioner, the scheme for compassionate appointment was not introduced by the respondent but the same was introduced by the respondent with effect from October 1975. While rejecting his application for compassionate appointment, the respondent has ignored an important aspect that at the time of death of his father, the petitioner and his brother were minor in the year 1969 and on account of his father's death, his mother had become lunatic. The respondents had not appreciated that the petitioner had become major after 1975 and at that time, on account of introduction of the policy, right to compassionate appointment has arisen."

Thus, the learned Judge has clearly held that it is the date on which the right in favour of the concerned employee has arisen that is to be seen and not the date on which the father of the petitioner has expired. As stated above, before the Alternative Dispute Resolution (VISAMA) a statement was made on behalf of the respondents by Under Secretary to the Home Department that the Government proposed to challenge this judgment before the Apex Court. However, no details have been furnished by the Ld. A.G.P. to show that the decision is challenged before the Apex Court. It may be also noted here that this decision was challenged by way of Letters Patent Appeal before the Division Bench, which rejected the appeal of the State Government and confirmed the judgment of the learned Single Judge. Thus, as on today the present judgment stands. Considering the facts and circumstances of the case, I am in total agreement with the decision of the learned Single Judge rendered in

aforesaid case. Thus, the petitioner cannot be denied appointment on the ground of the scheme is not applicable to his case. In other words, the communications dated 28th December, 1988 and 19th December, 1990 are required to be quashed and set aside. By these two communications the petitioner has been informed that his application for appointment to the post of Peon is rejected because his father had expired prior to introduction of the scheme in October 1975. The respondents are now required to be directed that they shall reconsider case of the petitioner for appointment on the post of Peon on compassionate ground without holding him disqualified on account of his father having died earlier i.e. prior to October 1975. The respondents, therefore, will now proceed to examine the case of the petitioner in relation to the relevant criteria laid down for the compassionate appointment and if he fits in that criteria, he shall be given the appointment. While considering the case of his appointment, whatever necessary age relaxation permissible under the rules shall be made by the respondents. While determining the priority amongst similarly situated candidates, if any, date of petitioner's first application shall be kept in view. This exercise will have to be carried out on or before 30th June, 2004.

With this direction, petition is partly allowed.
Rule made absolute to aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.